unreasonable and anticompetitive for SBC to require its carrier-customer to find this funding in three weeks or less.

C. Refund of Deposits

34. Recognizing the concerns of the Joint Commenters, the Commission questioned the reasonableness of SBC's policy on dcposit refunds.[70] In its *Direct Case,* SBC fails to demonstrate that its refund policy, as proposed in its tariff revisions for customers with both a history of late payments and impaired creditworthiness, is reasonable. In a time where working capital is scarce and the availability of additional investment capital is nearly impossible for carriers to obtain, it is reasonable for SBC's interstate access customers to want to govern their conduct in a manner that will ensure that they will receive their security deposit back upon meeting a set threshold, such as making timely payments for a twelve month period. Prompt payment alone should be enough to permit a customer to obtain its security deposit and all interest accrued. A customer could easily make all its payments, have no outstanding amounts owed lo SBC, and yet, due to an arbitrary creditworthiness rating, still be required to provide SBC with a security deposit in order to ensure SBC continues to provide it with service. SBC does not provide a reasonable justification as to why a customer cannot overcome an arbitrary creditworthiness determination hy SBC with a subsequent record of timely payments. **As** proposed, carricr-customers can ncvcr count on a refund of a security deposit amount and it becomes a matter entirely entrusted to the unilateral discretion of SBC

[70] *Designation Order* ¶ 31

D. Application of Revised Deposit Requirements to Term Plan Customers

35. The Commission correctly acknowledges in the *Designation Order* that the requirement of providing a new or increased security deposit to SBC would significantly reduce the carrier's working capital, which could also affect other capital or loan commitments the customer has." The Joint Coinmenters agree with the Commission's assertion that implementing the changes to SBC's tariff would be a serious destabilizing event in the competitive marketplace, and that the new security deposit requirements, if implemented, could potentially cause the carrier to need to restructure or terminate some services, which would, in turn, trigger a termination penalty to be assessed by SBC.[72]

36. As demonstrated previously, the changes proposed by SBC to its tariff are indeed material changes that affect SBC's term plan customers.[73] Material changes, according to Commission precedent, include those changes that have a direct impact on the performance or the overall structure of the contract, such as guarantees and other provisions, which affect the customer's fundamental legal obligations and rights under the contract.[74] The change in the deposit requirements are, as the Commission points out, a reduction in working capital, which would be a serious destabilizing event in the competitive marketplace."

37. Furthermore, despite its efforts to find support to the contrary, SBC's justifications do not pass under the substantial cause test established in *RCA American*

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71 *Id.* ¶ 33

72 *Id.*

73 *See August 9, 2002 Petition to Reject* at 16-17.

74 *See, e.g., RCA American Communications, Inc., Revisions to Tariff FCC Nos. 1 and 2, CC* Docket No. 80-766, Transmittal Nos. 191 and 273. *Memorandum Opinion and Order*, 86 FCC 2d 1197, ¶ 1 (proposing to "substantially increase rates in its tariff"), ¶¶ 16-18 (proposing, among other things, to shorten the service terms of the tariffs) (1981).

Communications, Inc.[76] The "business need for the revisions"[77] is not a sufficient justification to warrant the change, particularly considering how the changes in the security deposit structure would have a significant impact on SBC's customers' working capital levels, as well as their capital and loan commitments.[78] In addition, SBC ignores the fact that when a customer signs up to a term plan, it expects stability among all materials terms and conditions, not just the rates, as the *quid pro quo* for its agreement to purchase service for a specific term and to pay penalties for early termination. The deposit and discontinuance of service provisions are undeniably material terms of the long-term interstate access arrangements. SBC has not satisfied the requirements under the substantial cause lest to warrant implementing the changes to its tariff.

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75 *Designation Order* ¶ 33

76 **RCA** *American Communications, Inc.*, Memorandum and Order. 84 FCC 2d 353, 358 (1980); *id*, 86 FCC 2d 1197, 1201 (1981); 94 FCC 2d 1338, 1340 (1983).

77 *Direct Case* at 36-37.

78 *Designation Order* ¶ 33

III. CONCLUSION

For the foregoing reasons, SBC has not provided the Commission with adequate justifications in its ***Direct** Case* to warrant implementing its proposed tariff revisions to the SBC Tariffs as proposed in the SBC Transmittals. Therefore, the Commission should deny SBC's attempt to modify the SBC Tariffs.

Respectfully submitted

ALLEGIANCE TELECOM, INC.,
CABLE & WIRELESS,
GRANDE COMMUNICATIONS NETWORKS, INC.
KMC TELECOM HOLDINGS, INC.,
NUVOX INC.,
TALK AMERICA INC.,
XO COMMUNICATIONS. INC.

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Their Counsel

Date: November 14, 2002

CERTIFICATE OF SERVICE

I, Erin W. Emmott, hereby certify that, on this 14th day of November 2002, a copy of the foregoing ***Opposition to Direct Case of Ameritech Operating Companies, Nevada Bell Telephone Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, (collectively, "SBC"),*** was sent, as indicated, to the following individuals:

Marlene H. Dortch, Secretary **(Hand Delivery and Electronically)**
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Julie Saulnier **(Electronically)**
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jeffry A. Brueggeman **(Electronically)**
SBC Communications Inc.
1401 Eye Street, NW
Suite 400
Washington, DC 20005

Qualex International **(Electronically)**
Federal Communications Commission
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Erin W Emmott

Erin W. Emmott

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)
	)
Revisions by Southwestern Bell Telephone Company to Tariff F.C.C. No. 73, Transmittal No. 2906	)
	)
Revisions by Ameritech Operating Companies to Tariff F.C.C. No. 2, Transmittal No. 1312	)
	)
Revisions by Nevada Bell Telephone Company to Tariff F.C.C. No. 1, Transmittal No. 20	)
	)
Revisions by Pacific Bell Telephone Company to Tariff F.C.C. No. 1, Transmittal No. 77	)
	)
Revisions by Southern New England Telephone Companies to Tariff F.C.C. No. 39, Transmittal No, 772	)

PETITION TO REJECT
OR, ALTERNATIVELY,
TO SUSPEND AND INVESTIGATE

The Association for Local Telecommunication Services ("ALTS"), the Competitive Telecommunications Association ("CompTel"), Grande Communications Networks, Inc., Ionex Telecommunications, Inc., KMC Telecom Holdings, Inc., NuVox, Inc., Sage Telecom, Inc., Talk America Inc., and XO Communications, Inc. (collectively, the "f'etitioners"). by their attorneys and pursuant to 47 C.F.R. § 1.773, hereby petition the Federal Communications Commission (the "Commission") to reject or, alternatively, *to* suspend and investigate the following: (1) the revisions *to* Section 2.1.6 and Section 2.5.2 of Tariff F.C.C. No. 73 filed by Southwestern Bell

Telephone Company ("SWBT") in Transmittal No. 2906 on August 2, 2002 with an effective date of August 17,2002; (2) the revisions to Section 2.1.8 and Section 2.4.1 of Tariff F.C.C. No. 2 filed by Ameritech Operating Companies ("Ameritech") in Transmittal No. 1312 on August 2, 2002 with an effective date of August 17, 2002; (3) the revisions to Section 2.1.8 and Section 2.4.1 of Tariff F.C.C. No. 1 filed by Nevada Bell Telephone Company ("NBTC") in Transmittal No. 20 on August 2,2002 with an effective date of August 17.2002; (4) the revisions to Section 2.1.8 and Section 2.4.1 of Tariff F.C.C. No. 1 filed by Pacific Bell Telephone company ("PBTC") in Transmittal No. 77 on August 2,2002 with an effective date of August 17,2002; and (5) the revisions to Section 2.3 and Section 2.8.1 of Tariff F.C.C. No. 39 tiled by Southern New England Telephone Companies ("SNET") in Transmittal No. 772 on August 2,2002 with an effective date of August 17,2002 (collectively, the "tariff revisions"). Each Petitioner is an SBC' customer under at least one of these tariffs, or has members who are SBC customers under at least one of these tariffs, and therefore, has a direct interest in these tariff revisions.

I. *INTRODUCTION*

Like Iowa Telecommunications Services, Inc., BellSouth Telecommunications, Inc. ("BellSouth') and Verizon Telephone Companies ("Verizon"), SBC has proposed substantial revisions to the provisions of the Companies' tariffs governing security deposits. Like Verizon, SBC has also sought to modify the time frames in which refusals or discontinuances of service occur. If permitted to be implemented, these tariff revisions would provide SBC with the ability to unilaterally impose new and arduous requirements on its interstate access customers – including onerous deposits and prepayments – which could result in the shifting of millions of dollars of scarce working capital from SBC's carrier customers to their direct competitor, SBC.

The five (5) above-listed entities, SWBT, Ameritech, NBTC, PBTC and SNET will be collectively referred to as "SBC" or the "Companies" throughout the petition where applicable.

In addition, if implemented, these tariff revisions would provide SBC with complete and unfettered discretion to refuse to provision or disconnect service with tittle advance notice to the carrier customer and with little if any opportunity for the customer to take remedial action.

SBC claims that these changes are necessary to protect the Companies from the eminent risks and pitfalls resulting from "bad debt and the cash flow concerns of financially troubled customers" now plaguing the telecommunications industry in the wake of WorldCom filing for bankruptcy. Description and Justification ("D&J") at 1. However, such vague references to potential harms caused by the bankruptcy filing of one company and general fears of market instability cannot serve as a reasonable basis for punishing an entire industry segment. Looking beyond the vague references supplied by SBC, Petitioners discovered that SBC's recent ARMIS reports filed with the Commission actually show that the dangers SBC claims to face are severely overstated. Indeed, on approximately $18 billion in revenues, SBC reported $79 million in bad debt or roughly .4% for the years 2000 and 2001. Notably, even these figures are overstated, as they include disputed amounts. Thus, it does not appear that the tariffs SBC seeks to amend are a significant contributor to SBC's financial woes. By draining competitors' scarce working capital, the revisions proposed by SBC actually would perpetuate and extend instability among SBC's competitors and likely would compound rather than alleviate the undeniably slight bad debt problem SBC has under these tariffs.

SBC's proposed tariff revisions, although in certain respects less offensive than those proposed by BellSouth and Verizon, should be rejected because they are unjust and unreasonable in violation of Section 201(b) and facially discriminatory in violation of 202(a) of the Communications Act of 1934 (the "Act"). SBC simply has not provided reasonable, clear and

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to as "SBC" or the "Companies" throughout the petition where applicable.

explicit explanations in its D&J to justify the proposed tariff revisions. SBC offers little if any proof that its current tariff provisions do not provide adequate protection or that it has not received adequate assurance (from the courts or in practice through its own heavy-handed leveraging of its dominant position vis-à-vis its carrier customers).[1] Further, the tariff revisions should be rejected because they are in certain respects vague and ambiguous in violation the requirements in Section 61.2(a) and Section 61.54(j) of the Commission's rules. Finally, despite efforts to pin the need for the revisions on the alleged instability in the telecommunications industry and the potential loss of revenue resulting from WorldCom's bankruptcy. SBC has not provided the "substantial cause" necessary to justify making these unilateral changes to material terms and conditions of long-term tariffed arrangements.

In addition to the compelling legal reasons for rejecting and suspending SBC's proposed tariff revisions, there are compelling policy reasons for rejecting or suspending them. The harm that could be done to SBC's competitors by allowing the revisions to go into effect easily could be catastrophic and widespread. The tariff revisions' primary effect would be to drain SBC's competitors' working capital while allowing SBC to strengthen its dominant market position by insulating it from virtually all risk associated with the sale of its highly profitable special access services. Indeed, the shift of capital contemplated by SBC's proposed tariffs is simply not accounted for in the business plans of its remaining competitors, and the extent to which such a capital shift could be supported by individual carriers at any point in the near future is highly doubtful. There simply is no compelling policy reason why the Commission should allow SBC to use regulation as a means of draining or eliminating its cornpetiton and insulating itself from virtually any business risk.

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[1] *See, e.g.*, "SBC Takes Over Service to 13,000 Adelphia Business Customs," *TR Daily*, Aug. 8, 2002.

Petitioners note that the Pricing Policy Division of the Wireline Competition Bureau has recently suspended two similar tariff revisions' submitted by other incumbent local exchange carriers ("ILECs") for five months in order to commence an investigation into the lawfulness of the tariff revisions.[4] In both of these Suspension Orders, the Commission noted that the petitioners in these cases "raise substantial questions regarding the lawfulness of. . . the tariff revision that require further investigation."[5] Those "substantial questions" are also raised by the proposed SBC tariff revisions and, as such, SBC's proposals warrant, at a minimum, the same outcome – the Commission should suspend and investigate SBC's tariff revisions for five months, pending a thorough investigation into the lawfulness and anticompetitive effect of the proposed revisions.

II. TEE TARIFF REVISIONS ARE UNLAWFUL AND SHOULD BE REJECTED

The tariff revisions proposed by SBC are unlawful, as they are unreasonable and unjust, unreasonably discriminatory, vague and ambiguous, and substantially unjustified. The *tariff* revisions, if implemented, would permit SBC to impose additional onerous obligations for deposits/letters of credit[6] as well accelerate the time frame within which it could refuse or

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3 Petitioners understand that Verizon recently elected to voluntarily defer its tariff revision effect date tom August 9.2002 until August 23,2002.

4 *See Iowa Telecommunications Services. Inc. Tariff FCC No. 1*, Transmittal No. 12, DA 02-1732, rel. July 17, 2002 (Chief, Pricing Policy Division) ("Iowa *Telecommunications Suspension Order"); see also. BellSouth Telecommunications, Inc. Tariff FCC No. 1*, Transmittal No. 657, DA 02-1886 (Chief, Pricing Policy Division) (*"BellSouth Suspension Order") (collectively, the "Suspension Orders").*

5 The *Suspension Orders* acknowledged that the petitioners in both cases raised substantial questions as to *whether the ILECs' proposed revisions are* "unjust and unreasonable in violation of section 201(b) of the Act," "whether the language of the revision is vague and ambiguous in violation of sections 61.2 and 61.54 of the Commission's rules," and "whether [the ILEC] has demonstrated substantial cause for a material change by a dominant carrier in a provision of a term plan." See *Iowa Telecom Suspension Order at 2; see also. BellSouth Suspension Order at 2.*

6 *See* Section 2.5.2, SWBT tariff; Section 2.4.1 Ameritech tariff; 2.4.1 NBTC tariff; Section *2.4.1 PBTC* tariff and Section 2.8.1 SNET tariff for security deposit provisions incorporating late payment histories and credit worthiness criteria.

discontinue service[7] to its interstate access customers, many of whom depend on these services as essential inputs to their own end user services they provide in direct competition with SBC. These revisions would do nothing more than permit SBC to strengthen its near monopoly position in the local market. SBC's assertion that the revisions to its tariffs are necessary to "grant SBC some of the same protections available to other suppliers in dealing with credit impaired customers" rings hollow. D&J at 2. Indeed, SBC fails to acknowledge that the requirements it seeks to impose on its carrier customers through its FCC tariffs generally are not available to other suppliers and, as a practical matter, they are generally not available to non-dominant carriers. Non-dominant carriers operating without the shield of protection afforded by a federal tariff and ILEC market power could not unilaterally amend service contracts to demand or increase deposits, or shorten notice of discontinuance intervals. Petitioners urge the Commission to conclude that these additional obligations are facially unlawful and therefore should be rejected.

A. The Tariff Revisions Proposed by SBC Are Unjust, Unreasonable and Discriminatory in Violation of both Sections 201(b) and 202(a) of the Act

As set forth below, SBC has failed to provide adequate justification as to why its proposed tariff revisions are just and reasonable and do not discriminate unreasonably against SBC's carrier customers. Accordingly, Petitioners urge the Commission to conclude that the tariff revisions regarding deposits and prepayments as well as discontinuance of service are facially unlawful in violation of Sections 201(b)[8] and 202(a)[9] of the Act, or, in the alternative.

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7 See Section 2.1.6, SWBT tariff, Section 2.1.8 Ameritech tariff; 2.1.8 NBTC tariff; Section 2.18 PBTC tariff and Section 2.3SNET tariff for discontinuance and refusal of service provisions.

8 Section 201(b) provides, in relevant part, that "all charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."

9 Section 202(a) provider that "it shall be unlawful for my common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities. or services for or in

suspend and set for investigation SBC's proposed revisions so that their lawfulness and industry destabilizing effect can be evaluated more thoroughly.

1. Billing Regulations: Deposits and Prepayments

History of Late Payments / Amount of Deposit. As proposed, SBC's tariff revisions regarding both what constitutes a history of late payment and the amount SBC will request for deposit do not exclude disputed amounts. JLEC billing systems typically generate enormous amounts in monthly disputes, and SBC's billing systems *are* no exception to the rule. Moreover, SBC and other ILECs do not seem to have figured out a reliable method for setting aside the amounts in dispute from undisputed amounts due – nor have they devoted the resources needed to effectively address chronic over-billing. Indeed, chronic misbilling *is* a lucrative revenue generator for the ILECs. Their own dispute resolution processes – or lack thereof – further allows the ILECs to profit handsomely from resource-strapped CLECs who *are* unable to devote the necessary manpower to audit and dispute the numerous, voluminous and complex monthly bills issued by the ILECs. The result of SBC's failure to distinguish disputed and undisputed amounts is the unjust and unreasonable incorporation of disputed mounts in ILEC payment records (making it seem as though the CLEC is taking too long to pay and overstating ILEC risk) and in ILEC deposit requests (inflating the amount of billings upon which a deposit request *is* based). Indeed, even BellSouth submitted revised tariff language excluding disputed amounts from payment history and amounts requested."

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connection with like communication service, directly or indirectly, by any means or device. or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, *or to* subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

10 See BellSouth Tariff F.C.C. No. 1 at Section 2.4.1 (proposed effective date of July 9,2002). In practice, however, BellSouth has shown only limited ability to actually do this.

Credlt Worthiness *Standards* – Investment Grade Securities. SBC's proposal to use the subjective credit rating of "below investment grade"" of a carrier customer or its parent as a triggering factor to require security deposits is unjust and unreasonable. There is no plausible link, nor has SBC demonstrated any nexus between such ratings of the carrier or its parent and the ability of the carrier to make payments to vendors. Furthermore, SBC's assertion that its "[e]xperience over the past year has shown that carriers with no history of late payments, but whose credit ratings have been reduced, quickly can succumb in the turmoil roiling the telecommunications industry" does not provide reasonable justification and does not make the requirement itself reasonable (indeed, it *suggests* that SBC is focused on using its deposit and prepayment provisions as a weapon against its canier customm – SBC makes no mention of applying these provisions to other customers whose financial woes have been widely publicized). D&J at 1. With posturing and generalizations, SBC simply is preying on the fears of regulators by suggesting that what happened with WorldCom is indicative of the marketplace in general and inevitably will happen to all carriers. The *facts* surrounding WorldCom's current financial condition appear to be unique and isolated. Indeed, *SBC* provides no evidence to the contrary and no specific evidence of a correlation between good payment records and investment grade securities. Indeed, given the critical and end-user impacting nature of the services most CLECs purchase from SBC and other ILECs, there is good reason to *think* that good payers will continue to be good payers, regardless of the grade given to their securities.

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11 As defined by 17 C.F.R. § 239.13(b)(2), a non-convertible security is an investment grade security if. at the time of sale, at least one nationally recognized statistical rating organization (as that term W used *io* Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (Sec. 240.15c3-1(c)(2)(vi)(F) of this Chapter)) has rated the security in one of its generic rating categories which signifier investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

Credit Worthiness Standards – Review of Debt Securities. Similarly, it is unjust and unreasonable for SBC to propose that it should be permitted to subject customers to security deposits merely because a ''nationally recognized credit rating organization'' initiates a subjective review of the customer's debt securities or that of its parent for possible downgrade to below investment grade. As set forth above, SBC has failed to demonstrate any correlation between the ratings of securities and the risk of non-payment. SBC further compounds the unreasonableness of its revisions by introducing the subjectivity necessarily involved in initiating such a review as a factor determinative of impaired credit worthiness.[12] Notably, this trigger also is inconsistent with SBC's ''investment grade" criterion, because as defined by the Securities Exchange Commission ("SEC"), only one nationally recognized statistical rating organization (as defined in its rules) needs to rate the securities as "investment grade" for it to qualify under that agency's definition of investment grade securities – a review or even a downgrade by one or several rating organizations does not prevent compliance with the SEC's definition.

Credit Worthiness Standards – Customer Rating. It is unjust and unreasonable to propose as a trigger for deposit or prepayment requirements for carriers without rated securities various subjective ratings by Dun and Bradstreet ("D&B"). SBC has provided no evidence that a "fair" composite credit score or "high risk" Paydex score have any correlation to a carrier's payment history with SBC or that these measures provide any reliable indication of whether or not a carrier will continue to pay SBC in the future. SBC also fails to demonstrate any correlation between the D&B ratings and a rated carrier's ability to attract investment or generate revenues that will enable it to make payments to SBC.

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[12] SBC, *along* with Verizon and BellSouth, currently are under such review and their own officials no doubt believe such reviews are unwarranted. See Moody's Cuts BellSouth Outlook; Eyes Other Bell Debt Ratings," *TR Daily*, August 8, 2002; see also 'BellSouth, SBC, Verizon Under 'Close Study' - Moody's, *New York Times*, August 8, 2002, http://www.nytimes.com/reuters/technology/tech-telecoms-moodys.html.

Credit Worthiness Standards – Bankruptcy. It would be unjust and unreasonable to allow SBC to use its FCC tariffs as a tool to assess a security deposit on or demand prepayments from customers that have "commenced a voluntary receivership or bankruptcy proceeding". The bankruptcy courts have both the mandate and authority to determine "adequate protection"[13] and they must do so in light of the totality of the circumstances before them. Permitting SBC to establish additional protections outside this process undermines the established bankruptcy code and process by permitting SBC in effect to "double dip". Indeed, SBC makes clear that such double dipping is precisely its intention. Specifically, SBC states that if it is prevented from implementing these revisions, the impact on SBC will be to "put it at the back of the line, behind other suppliers of equipment and services, and increasing the risk that it will not be paid for the services." D&J at 2. But, there is no evidence that SBC is or would be at "the back of the line". Rather, SBC is likely to be toward the front of the line in terms of the assurances they get from the courts (and also by way of their own heavy-handed exercise of their dominant/exclusive provider position). SBC deserves neither pity nor special treatment in addition to that already provided by the bankruptcy courts. Simply put, the Commission should not be duped into interfering with the jurisdiction of the bankruptcy courts or providing SBC with an opportunity to double dip.

Million Dollar Threshold. By excluding customers with less than $1 million in monthly access billings from the credit worthiness triggers for deposits, SBC appears to be shielding itself from the uncomfortable proposition of having to ask its non-carrier customers for new or increased deposits. Further, it proposes to put itself in the position of driving up its competitors'

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[13] See 11 U.S.C. § 361 (explaining what constitutes "adequate protection" under Sections 362.363 and 364 of the Bankruptcy Code).

costs by encumbering scarce working capital. Such an arbitrary and self-serving distinction is inherently unjust and unreasonable. Moreover, it is unreasonably discriminatory. If SBC is truly interested in limiting the applicability of its credit worthiness triggers to only those customers with volumes of billings significant enough to create substantial exposure for SBC, see D&J at 2 (claiming that SBC has "sought to tailor its regulations governing deposits and other payments to meet the extraordinary threat of non-payment posed by its largest customers"), a reasonable threshold would have to be selected taking into account both the massive amount of revenue and profits generated by SBC under these tariffs and the precise circumstances under which SBC actually faces a heightened risk of nonpayment or undue exposure. For example, it may be reasonable to establish that credit worthiness triggers should apply only to customers with more than $10 million in undisputed amounts owed more than thirty days late. However, even this proposal should be subject to an investigation to determine whether it more realistically reflects both a significant amount of money and risk – while not unduly imposing unwarranted costs on competitors (and end users) – under the particular tariffs at issue.

Two Month Deposit SBC has revised its security deposit provisions so that it is easier for it to impose a two month cash deposit requirement upon its carrier competitors without demonstrating that such an amount is reasonable or necessary. The criteria listed under credit worthiness include objective triggers that are. themselves based on subjective measures or that are otherwise intentionally overbroad. The triggers provide virtually no restraints on **SBC's** ability to impose a two month deposit on most of its competitors. Moreover, given that special access is billed in advance, it hardly seems reasonable that a two month deposit requirement should be imposed – which effectively could tie up a competitor's capital in an amount equal to a full quarter's worth of billings. Furthermore, by allowing some carrier customers to qualify for only a one month security deposit instead of two months, SBC's own proposal reinforces the notion that two months is more than what is necessary to protect SBC from any risks it might incur with its special access customers. In short, SBC's proposal to require deposits based on two months of billings for services billed in advance is unjust and unreasonable.

Interest on Payments. It is unreasonable for SBC to propose to attempt to reduce the rate of interest it pays on deposits to a rate equal to that of a one-year Treasury Bill, which for the week of August 7, 2002 is approximately 1.820% per annum.[14] That rate comes nowhere close to the rate most CLECs will have pay to strand their scarce capital with SBC in a deposit or prepayment. Instead, interest on deposits and prepayments held by SBC should be paid at a rate at least qual to the interest rate SBC subjects its carrier customers to for late payments. By way of example, in SWBT's current Tariff F.C.C. No. 73, past due charges are levied at the lesser of "either the highest interest rate which may be levied by law for commercial transactions" or ".0005% per day" or approximately 18% per annum.[15] If SBC does not impose the same rate which it charges for late payments, then the interest rate should be, at a minimum, at least 12%, as available under BellSouth's F.C.C. Tariff and some of Verizon's F.C.C. Tariffs, and not based on the rate of one-year Treasury Bills. Given the high cost of capital for carrier customers today, 12% certainly is a more reasonable rate than that proposed by SBC.

Lack of Dispute Resolution Provisions. It is unreasonable to permit SBC to impose deposit and prepayment requirements on its carrier customers without also providing its customers with an opportunity to challenge the imposition of the deposit or prepayment requirement. Experience has shown that SBC's billing systems are prone to chronic errors, and dispute resolution options, if any, are inadequate. As a result. there undoubtedly will be disputes

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14 See http://www.bankrate.com/brm/ratehm.asp.

regarding what constitutes a "failure to pay two monthly bills by the bill due date within a twelve month period of time." Moreover, it is evitable that disputes will arise from SBC's application of any of the five (5) credit worthiness criteria (if any are accepted) as the impetus for requiring security deposits on its carrier customers. SBC's customers must be permitted to challenge the blanket application of any one of the overly broad factors and both SBC and its customers should be entitled to resolve these disputes in an efficient and cost effective manner.[16] Accordingly, alternative dispute resolution provisions should be included so as to avoid costly and lengthy litigation over such proposals (as well as to avoid strong-arming by SBC while such a dispute is pending).

Prepayments / Accelerated Payments. While Petitioners commend SBC for allowing its carrier customers to invoke an alternative option to stranding scarce capital in a deposit, Petitioners believe that an accelerated payment option would be a better alternative than prepayment. An accelerated payment option would provide carrier customers with a way to satisfy SBC's demand for some form of financial guarantee, thus reducing SBC's perceived risks, while avoiding the impact of a capital stranding deposit requirement. Furthermore, accelerated payments are easier to administer than advance payments, reducing the need for true-ups. As currently drafted in the proposed tariff revisions, the prepayment option is little more than a recurring deposit. In addition, SBC's proposed refusal to pay interest on amounts prepaid that are in excess of actual amounts due for services rendered is unreasonable. If any alternative payment proposal should be adopted, it must remain an option for the customer to decide upon (it may be too administratively burdensome for some carriers) and it should be accelerated rather

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15 SWBT Tariff F.C.C. No. 73, effective May 1, 1997, Section 2.5.3(A)(1)-(2).

16 In fact, even BellSouth agreed to include an alternative dispute resolution option in its tariff revisions *(although its refusal to share the costs of such proceedings is unreasonable).*

than advanced payment in intervals of fifteen (15) or twenty-one (21) days with additional time built to allow the customer *to* initiate disputes on amounts billed. Although accelerated payment would require both SBC and its customers to modify their internal processes. it seems that SBC is capable and willing, as it already has proposed a 21 day interval for prepayments.[17]

2. Discontinuance of Service

SBC's proposal to unilaterally reduce the amount of notice due customers prior to discontinuance or refusal of service from thirty days to fifteen days – or ten days (for some customers) – is patently unjust and unreasonable. Fifteen or as few as ten days do not provide sufficient time for a customer to cure any defects, or to attempt to reconcile any discrepancies over billings, payments and disputes, or address disputes over any other part of what typically is a contentious and multi-faceted relationship between the companies. Even more critically, however, SBC's proposed changes threaten substantial harms to CLEC customers who then would face their own disconnection and service outages with little notice.[18] Further, SBC's reduced intervals give its carrier customers absolutely no chance of complying with federal and state notice requirements for the disconnection of services to end user customers. It would be patently unreasonable for the Commission to allow SBC to in effect push its competitors into violations of federal and state rules, while making end user customers the victims of this anticompetitive gambit.

[17] See, SWBT Tariff Section 2.5.2(B); Ameritech Tariff Section 2.4.1(B); NBTC Tariff Section 2.4.1(B); PBTC Tariff Section 2.4.1(B); *SNET* Tariff Section 2.8.1(B).

[18] The ILECs' claim that CLECs easily could switch to an alternative provider is a claim utterly divorced from reality. Although the Commission satisfied itself that counting collocations was all that was necessary to grant the ILECs special access pricing flexibility, collocations – no matter how many – do not indicate the presence of competitive alternatives on routes where ILEC special access services would need to be replaced. If such an ill-conceived proxy were adopted in this context, the Commission inevitably would find itself presiding over myriad service disruptions and consumer backlash certain to generate an inquisition from Capitol Hill.

B. Tariff Revisions Proposed by SBC Are Vague and Ambiguous, in Violation of both Sections 61.2(a) and 61.54(j) of the Commission's Rules

The Petitioners further urge the Commission to conclude that the proposed tariff revisions and the explanations provided by SBC in its D&J fail to meet the standards of clarity required under both Section 61.2(a)[19] and Section 61.54(j)[20] of the Commission's rules.

1. History of Late Payments

Although Petitioners welcome SBC's effort to define what constitutes a history of late payment, the result produced is impermissibly vague and ambiguous. Most notably, SBC's proposal provides no clarity on whether refusal to pay disputed amounts will be considered a failure to pay. As explained above, failure. to exclude disputed amounts would be unjust and unreasonable. Although SBC includes a provision indicating that a customer's refusal to pay disputed amounts will not serve as the basis for refusal or disconnection of services (at least until SBC unilaterally renders judgment on the dispute), it proposes no similar provision that would similarly limit its ability to demand deposits or prepayments based on a customer's refusal to pay disputed amounts.

2. Impaired Credit Worthiness Triggers

The concept of "impaired credit worthiness" proposed by SBC as a new criterion enabling it to extract huge deposits, prepayments and accelerated payments from its competitors *also* is unduly vague and ambiguous. SBC's identification of ostensibly "objective" triggers do little to lend clarity to this criteria, as they bear little if my relationship to a customer's ability to

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19 Section 61.2(a) states "in order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations." *41* C.F.R. § *61.2(a).*

20 Section 61.54(j) requires, in relevant part that ". . .regulations, exceptions, and conditions which govern the tariff must by stated clearly and definitely. AU general rules, regulations, exceptions or conditions which in any way affect the rates named in the tariff must be specified."

pay SBC and are clearly designed to be so overbroad that few if any of SBC's competitors could hope to escape their triggering in the near term.

C. SBC's Proposed Tariff Revisions Violate the "Substantial Cause" Teat

It is established Commission precedent that a telecommunications carrier, such as SBC, may not make unilateral and material revisions to a tariffed long-term service arrangement unless it first demonstrates "substantial cause" for the revisions.*' Under this doctrine, the Commission will closely scrutinize the reasons given by the carrier for the revisions, as well as the burden imposed on the customer, and then determine based on all relevant circumstances whether the carrier has demonstrated "substantial cause" for modifying the long-term tariffs.

SBC's tariff revisions, as drafted, would appear to apply to customers' long-term access service *arrangements,* as well as other services ordered under the tariffs. SBC's assertion that the tariff revisions relating to security deposits and refusal/discontinuance of *service* are not part of the long-term arrangements simply because 'hone of the plans [listed as "long-term service tariffs"] incorporate the general terms and conditions of the tariff" falls flat. D&J at 13. SBC essentially is arguing that general terms and conditions will not be applicable unless specifically incorporated in subsequent provisions of the tariff. This position is contrary to the manner in which the tariff language is applied in practice (where general terms and conditions apply to all services offered *in addition to* any service-specific terms or conditions). For example, if SBC were to terminate any of the listed long-term service tariff arrangements due to failure *to* comply with the proposed revisions, certainly the termination procedures and time frames set forth in the tariff revisions would be triggered. Contrary to SBC's assertion that term plans are intended to provide stability only for rates, when a customer signs up for a term plan, it expects stability

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21 See *e.g., RCA* American *Communications,* Inc. Memorandum, Opinion and Order, 84 FCC 2d 353, 358 (1980); *id..* 86 FCC 2d 1197, 1201 (1981), *id.,* 94 FCC 2d 1338, 1340 (1983), *id.,* 2 FCC Rcd 2363 (1987).

among all materials terms and conditions, not just the rates, as the *quid pro quo* for its agreement to purchase service for a specific term and to pay penalties for early termination. The deposit and discontinuance of service provisions are undeniably material terms of the long-term interstate access arrangements. Indeed, the onerous deposit and prepayment provisions proposed by SBC will effectively drive higher the price paid by its competitors for SBC's tariffed long-term service arrangements. Thus, the instant tariff revisions clearly invoke the "substantial cause" doctrine.

D. The Tariff Revisions Proposed by SBC Violate FCC and State Laws Regarding Discontinuance of Service

SBC has sought Commission approval to shorten the notice period for refusal or discontinuance of service from thirty days to ten or fifteen days, without providing a legitimate legal or policy justification. This requested change not only threatens substantial harms to Petitioners by permitting SBC to, on its own volition, refuse or discontinue service to carrier customers who, in turn, are providing service directly to end user customers, but it is also facially unlawful, as it is in direct conflict with the Commission's own established principles and timelines regarding discontinuance of service.

Under the Commission's discontinuance of service rules,[22] non-dominant carriers are only permitted to discontinue service on the thirty-first day after notice has been provided; dominant carriers, such as SBC, can only do so after the sixtieth day post notice. Indeed, Chairman Powell in his written statements to the Senate Committee on Commerce, Science and Transportation recently emphasized that the thirty day grace period from notice to actual discontinuance of service is a "minimum period required by our Rules and that the Commission

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[22] 41 C.F.R. § 63.71.

may extend this period should the public interest warrant such an extension."[23] SBC does not have the authority to modify the Commission's rules with its tariff revisions. To permit SBC to effectively force violations of the thirty day minimum period would cause tremendous harm both to its competitors and to consumers whose service could easily be disrupted."

Further, the proposed shortening of the notice period also directly violates many, if not most, state laws concerning discontinuance of service. Most states, following the lead of the Commission, have implemented thirty day notice periods for discontinuing customer service. Several states have a sixty day requirement. The proposed ten or fifteen day time period that SBC alleges is necessary to protect it from the risks associated with its provisioning of highly profitable access services would force carrier customers to violate state requirements, as termination by SBC would give them no chance to comply with the state-specific time frames. Clearly, SBC should not be able to effectively upend state law with a federal tariff filing.

III. THE TARIFF REVISIONS ARE PROFOUNDLY ANTICOMPETITIVE

SBC's filing is devoid of concrete evidence as to how alleged instabilities in the telecommunications industry have impacted SBC's financial condition resulting from the provision of services under the tariffs SBC seeks to revise. Nor does it explain why the existing tariff provisions would not suffice, if diligently applied, as a method of protecting SBC from the impacts of the alleged instability. Rather, by attempting to justifying the tariff revisions based almost exclusively on the alleged $300 million owed to SBC by WorldCom, SBC is doing nothing more than using generalized fears of industry instability (exacerbated by the WorldCom bankruptcy) as a means to drain its competitors of Scarce working capital while insulating itself from virtually all risk. D&J at 8. In effect, SBC seeks to use its tariff revisions to extend its

[23] *See* Powell *July 30, 2002, Statement lo Senate Committee on Commerce, Science and Transportation* at 4.

already significant competitive advantage and punish an entire industry segment for the "problems" it believes have been created by WorldCom's bankruptcy and accounting improprieties

While SBC asserts in its *D&J* at 7 that *the* Companies, as parties to 53 bankruptcies, "have lost hundreds of millions of dollars in unpaid debt" over the last two years as justification as to why SBC may impose such clearly anticompetitive measures on its canier customers, these figures appear to be inconsistent with ARMIS reports filed with the Commission. For *the* years 2000 and 2001, SBC reported revenues of approximately eighteen billion dollars ($18,000,000,000) with uncollected debt accounting for approximately seventy-nine million dollars ($79,000,000) or roughly .4%[25]. Notably, this figure includes disputed charge amounts, so even these figures inflate SBC's alleged losses. This figure is so incredibly small that it is without a doubt that the anticompetitive effect of SBC's proposed tariff revisions easily outweighs the alleged need to further insulate SBC from the relatively minimal risks it faces.

Interestingly, for approximately the same *time* period,[26] SBC was subject to approximately four hundred million dollars ($400,000,000) in fines,[27] of which only approximately sixty-three million ($63,000,000) were the result of Violations of merger conditions.[28] In *2002* alone, SBC has been subjected to or has pending against it, fines totaling

24 *See* id. at 1 noting that "[p]rotecting consumers from service disruptions is our first and highest priority".

25 *See* Automated Report Management Information System ("ARMIS") report 43-04, available from the FCC's Industry Analysis and Technology Division of the Wireline Competition Bureau at http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.hts.

26 Because the time period is in the *ARMIS* reports and the payment of fines schedule not directly sync up, the figures are close comparisons.

27 *See* "RBOC Fines and Penalties – SBC, Pacific Bell, Ameritech," Voice For choices, http://www.voicesforchoices.com/1091/wrapper.jsp?PID=1091-42 (data used to calculate figures: January 2000 through July *2002)*.

28 *See Notice of SBC Voluntary Payments Pursuant to Merger* Conditions. *CC* Docket No. *98*-141 rel. Aug. 1, 2002. Payment figures are for August 2000 through February 2002. Since its payment in April 2002, SBC